

## **§ 200.88**

### **§ 200.88 Late charge.**

(a) The mortgage may provide for the collection by the mortgagee of a late charge in accordance with terms, conditions, and standards of the Commissioner for each dollar of each payment to interest or principal:

(1) More than 10 days in arrears to cover the expense involved in handling delinquent payments;

(2) For multifamily project mortgages for which HUD issued a firm commitment for mortgage insurance before September 1, 2011, and for multifamily project mortgages insured under section 232 of the Act (12 U.S.C. 1715w), more than 15 days in arrears to cover the expense involved in handling delinquent payments.

(b) Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.

[76 FR 24369, May 2, 2011]

#### **COST CERTIFICATION**

### **§ 200.95 Certification of cost requirements.**

(a) Before initial endorsement of the mortgage for insurance, the mortgagor, the mortgagee, and the Commissioner shall enter into an agreement in form and content satisfactory to the Commissioner for the purpose of precluding any excess of mortgage proceeds over statutory limitations. Under this agreement, the mortgagor shall disclose its relationship with the builder, including any collateral agreement, and shall agree:

(1) To enter into a construction contract, the terms of which shall depend on whether or not there exists an identity of interest between the mortgagor and the builder.

(2) To execute a Certificate of Actual Costs, upon completion of all physical improvements on the mortgaged property.

(3) To apply in reduction of the outstanding balance of the principal of the mortgage any excess of mortgage proceeds over statutory limitations based on actual cost.

(b) The provisions of paragraph (a) of this section relating to disclosure and the requirement for a construction

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contract shall not apply where the mortgagor is the general contractor.

### **§ 200.96 Certificates of actual cost.**

(a) The mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and before final endorsement, except that in the case of an existing project that does not require substantial rehabilitation and where the commitment provides for completion of specified repairs after endorsement, a supplemental certificate of actual cost will be submitted covering the completed costs of any such repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, partners or other entity member ownership, of construction and other costs, as prescribed by the Commissioner.

(b) The Certificate of Actual Cost shall be verified by an independent Certified Public Accountant or independent public accountant in a manner acceptable to the Commissioner.

(c) Upon the Commissioner's approval of the mortgagor's certification of actual cost such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

### **§ 200.97 Adjustments resulting from cost certification.**

(a) *Fee simple site.* Upon receipt of the mortgagor's certification of actual cost there shall be added to the total amount thereof the Commissioner's estimate of the fair market value of any land included in the mortgage security and owned by the mortgagor in fee, such value being prior to the construction of the improvements.

(b) *Leasehold site.* In the event the land is held under a leasehold or other interest less than a fee, the cost, if any, of acquiring the leasehold or other interest is considered an allowable expense which may be added to actual cost provided that in no event shall such amount be in excess of the fair market value of such leasehold or